

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29603 of 2016

Arising Out of PS.Case No. -540 Year- 2013 Thana -DARBHANGA COMPLAINT CASE District-
DARBHANGA

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Sharafat Hussain @ Bachcha Hussain @ Bachcha Miya Son of Late Alijan
Miya, Resident of Village- Gaura, Police Station- Kusheshwar Asthan,
District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar.
2. Abdul Gafur, Son of Late Liyakat Miya, Residents of Village- Gaura,
Police Station- Kusheshwar Asthan, District- Darbhanga.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Prasad, Advocate

For the Opposite Party/s : Mr. Prabhas Ranjan

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**
ORAL ORDER

4 08-11-2016 The notice has already been served upon opposite party no.2 but no
one appears on behalf of the opposite party no.2.

Heard learned counsel for the petitioner as well as learned Addl.
Public Prosecutor for the State.

Petitioner apprehends his arrest in connection with Complaint Case
No.540 of 2013 in which prima facie case has been found for the offences
punishable under Sections 323, 406, 420 and 504/34 of the Indian Penal Code
and, accordingly, summons were issued to procure the attendance of
petitioner and other accused but it appears that petitioner instead of
surrendering before the trial court chose to file anticipatory bail.

A Co-ordinate Bench of this Court has already held that if in a
complaint case, summon is issued, then in that event, the accused does not
have any apprehension of arrest and the anticipatory bail is not maintainable.

Learned counsel for the petitioner submits that now the warrant of arrest has already been issued against the petitioner. Even if the court below has issued warrant of arrest against the petitioner, then also, this petition is not maintainable because the warrant of arrest has been issued against the petitioner due to his laches as he failed to appear before the court below on issuance of summons.

Accordingly, this petition stands disposed of being not maintainable. However, it is made clear that if petitioner surrenders and seeks regular bail before the court below within four weeks from the date of receipt/production of a copy of this order, the concerned court shall consider the regular bail application on its own merit without being prejudiced by this order, particularly, keeping in mind that initially only summon had been issued against the petitioner.

(Hemant Kumar Srivastava, J)

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